No. 83-1041

IN THE

Supreme Court of the United States

October Term, 1983

J.T. TAYLOR, JR.,
ZACHARY TAYLOR, GORDON H. DENTON
and
L.J. MOORE,

Appellants,

vs.

STATE OF NORTH CAROLINA,

Appellee.

ON APPEAL FROM THE
NORTH CAROLINA COURT OF APPEALS
THREE B DIVISION

MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL

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QUESTION PRESENTED

Does *N.C. Gen. Stat.* §146-79, which provides that in all suits involving any land to which the State of North Carolina is a party the title to such lands shall be presumed to be in the State until the other party shall show that he has a good and valid title to such lands in himself, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, both on its face and as applied in this case?

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CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

U.S. Const. amend. XIV, §1:

> No state shall ... deprive any person of life, liberty, or property, without due process of law. ...

N.C. Gen. Stat. § 146-79:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

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Appellee respectfully moves this Court to dismiss the appeal of Appellants for review of the decision of the North Carolina Court of Appeals, Three B Division, entered on February 15, 1983, in *State v. Taylor,* 60 N. C. App. 673, 300 S.E. 2d 42 (1983).

STATEMENT OF THE CASE

Appellee STATE OF NORTH CAROLINA (hereinafter "the State") commenced this civil action in the Craven County Superior Court against Appellants J.T. TAYLOR, JR., ZACHARY TAYLOR and GORDON H. DENTON (hereinafter "the Taylor Group") asserting causes of action to remove a cloud on the State's title to certain land in Craven County, North Carolina, and for other related relief. Other parties were joined as additional defendants, including Appellant L.J. MOORE (hereinafter "Moore").

Taylor Group filed answer alleging exclusive ownership of the land in question and raised, as a plea in bar of the

State's claim of title, the asserted unconstitutionality of *N.C. Gen Stat* § 146-79 under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The court denied this defense by order.

Moore filed answer alleging exclusive ownership of the land in question but did not plead any constitutional defense.

At trial on the issue of title, State's witness Robert T. Newcomb, a registered surveyor, testified he surveyed the land in question, identifying a survey map and an aerial photograph delineating boundaries of the land which were introduced as State exhibits. On cross-examination, he testified that the land was located within the exterior boundaries of Land Grant No. 819 issued by the State to David Allison in 1795.

Taylor Group presented evidence of adverse possession of the land in question beginning in the year 1968 and documentary evidence which they contended established their record chain of title. *State v. Taylor, supra* (675--676). In their evidence, the Taylor Group offered a witness, R. Bryant Wall, whose testimony identified four of the State's proposed documentary exhibits. He testified that these four deeds established a chain of title conveyances of Allison Land Grant No. 819, culminating in a tax deed dated September 25, 1801, from Stephen Harris, Sheriff of Craven County, to Benjamin Williams, then-governor of the State of North Carolina. Since the State was not required to introduce rebuttal evidence at trial, these deeds were not introduced.

Moore introduced documentary evidence of a chain of title based upon a purported deed common to the Taylor Group's chain of title.

At the close of defendants' evidence, the State's motion for directed verdicts against all defendants was allowed. The court accordingly entered judgment declaring the State to be owner of the land.

On appeal brought by all defendants, the North Carolina Court of Appeals held that the presumption of title in the State set forth in *N.C. Gen. Stat.* § 146-70 was constitutional and affirmed the holding of the trial court.

The Taylor Group and Moore appealed to the North Carolina Supreme Court, but that court dismissed the appeals.

Taylor Group and Moore now request this Court to review the constitutionality of *N.C. Gen. Stat.* § 146-79.

SUMMARY OF APPELLEE'S ARGUMENTS

N.C. Gen. Stat. § 146-79 provides in pertinent part:

> In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

Appellants argue the statute is unconstitutional *on its face* because the presumption it creates is patently unreasonable and amounts to a deprivation of property without due process. These arguments are unsound since, first, there is a rational connection between the fact presumed (*i.e.*, that title to the land in question is vested in the State) and the fact upon which this presumption is based (*ie.*, that the State is a

party to the litigation). Second, the statute does not deprive anyone of any property or title, but merely acts as a procedural device placing the burden of proof to show good and valid title. Finally, the statute does not deprive anyone of any notice, right to a hearing, or right to produce evidence; rather, it envisions a fair opportunity to show a good and valid title.

Appellants complain the statute is unconstitutional *as applied*, alleging its application in the face of evidence to the contrary is manifestly unreasonable. This overlooks evidence by their expert witness that although the State did part with title, title later returned to the State by valid recorded conveyances. It overlooks the invalidity of other evidence they introduced — namely, a purported 1908 trust deed. This document was determined by the North Carolina Court of Appeals to be inoperative to convey title "since it lacked evidence of full execution, recordation or delivery". *State v. Taylor, supra,* at 677. It also overlooks their inability to show any valid conveyance of the land from the State since the return of title into the State in 1801, and show any connected chain of title to themselves.

REASONS FOR DISMISSING THE APPEAL

Appellants cite six opinions of this Court for their assertion that *N.C. Gen. Stat.* § 146-79 is unconstitutional on its face. Of these, four appear to have no bearing on the present case: *United States Department of Agriculture v. Murry,* 413 U.S. 508, 93 S. Ct. 2832, 37 L.Ed. 2d 767 (1973); *Stanley v. Illinois,* 405 U.S. 645, 92 S. Ct. 1208, 31 L.Ed. 2d 551 (1972); *Leary v. United States,* 395 U.S. 6, 89 S. Ct. 1532, 23 L.Ed. 2d 57 (1969); and *Tot v. United States,* 319 U.S. 463, 63 S. Ct. 1241, 87 L.Ed. 1519 (1943).

The statute in *Murry, supra,* mandated ineligibility of households to receive foodstamps on the basis of a

conclusive, irrebuttable presumption contrary to fact and against which there was no avenue of redress. The law in *Stanley, supra,* presumed unwed fathers were unfit to rear their natural children and allowed a father to be deprived of his children without any opportunity for a hearing. *N.C. Gen. Stat.* § 146-79 does not deprive a party of any rights or title without due notice, right to hearing and the right to produce evidence. It envisions a full and fair opportunity to present all pertinent evidence.

Leary, supra and *Tot, supra,* involved presumptions in criminal statutes which were irrational and arbitrary. Also, different, more stringent due process standards apply to presumptions in criminal statutes.

None of their six authorities involved a land title lawsuit, nor have we found any. Land title law has always been left to the jurisdiction in which the land lies, even where a federal claim to title is asserted. See *Block v. North Dakota,* _____ U.S. _____, 103 S. Ct. 1811, 1822, 75 L.Ed 2d 840, 857, (1983) (FN 28).

Both *Mobile, J. & K.C. Railroad v. Turnipseed,* 219 U.S. 35, 31 S. Ct. 136, 55 L.Ed. 78 (1910) and *Bandini Petroleum Co. v. Superior Court,* 284 U.S. 8, 52 S. Ct. 103, 76 L.Ed. 136 (1931) *upheld* state statutes creating presumptions of fact. They provide instructive reasoning in support of constitutionality of our statute.

> *Mobile, supra,* misquoted in part by Appellants, says:
>
> > Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government ... .
> >
> > . . . .
> >
> > That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal

> protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a pruely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.
>
> If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him.

Id., at 42-43. Our statute meets that test of this Court.

It merely embodies basic law of real property in the thirteen original states. Each state owns all land within it absent any showing to the contrary. It has the ultimate title to the soil. This title was acquired originally by one of the most ancient methods known to mankind, armed conquest. See *State v. West,* 293 N.C. 18, 28, 235 S.E. 2d 150 (1977), wherein our Justice Lake states:

> The Treaty of Paris simply recognized the established fact of history that North Carolina was, by reason of a successful revolution, a free and independent state, and no longer a British colony....As Justice Clifford said in *United States, Lyon et al v. Huckabee,* 16 Wall. 414, 21 L.Ed. 457 (1873); 'Complete conquest . . . carries with it all the rights of the former government, . . . the conqueror . . . becomes the absolute owner of

> the property conquered from the enemy . . . . His rights . . . extend to all the property and rights of the conquered State, including . . . real property.'

See also, 72 Am. Jur. 2d *States, Territories, and Dependencies,* § 66.

All private real property rights derive from the sovereign. Our statute merely reflects their natural origin by reasonably placing the burden upon the private party to show by some legally recognized method that title has devolved upon him.

Despite contentions that the statute places an unduly harsh burden, the contrary is true. But for the statute, how would the State demonstrate title in itself? Surely this Court would not require the State to introduce the Declaration of Independence, prove the surrender of Cornwallis at Yorktown, nor introduce the Treaty of Paris (1783). These would constitute the muniments of the State's title. Surely this Court would not require the State to then proceed to the next logical, but impossible, mode of producing evidence — *i.e.,* the proof of a negative proposition that the State has never parted with title. That would require the State to introduce and locate literally thousands of land grants and deeds heretofore issued and to demonstrate that none included the land in controversy.

Would this Court then require the State to prove no person had acquired title by adverse possession? It is perfectly reasonable to place the burden of proof upon the private litigant. He should have the most intimate knowledge of facts necessary to establish valid title.

This Court, when called upon to determine constitutionality, accepts the construction placed upon a state statute by the highest court of the state as part of the

statutory provision. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 31 S. Ct. 337, 55 L.Ed. 369 (1911). Appellants cite several North Carolina cases. *Taylor v. Johnston*, 289 N.C. 690, 224 S.E. 2d 567 (1976); *State v. Brooks*, 279 N.C. 45, 181 S.E. 2d 553 (1971); and *State v. Chadwick*, 31 N.C. App. 398, 229 S.E. 2d 255 (1976). *State v. Chadwick, supra,* says: "The presumption of title in the State lasts only until the rival claimant establishes valid title in himself." *Id.*, at 399. The showing of a connected chain of title all the way back to the State is not the sole avenue available to establish a valid title. There are several other methods available. *Taylor v. Johnston, supra; Mobley v. Griffin*, 104 N.C. 112, 10 S.E. 142 (1889). The Court is referred to the *Mobley* landmark case. The methods include:

1. Without exhibiting any grant from the State, open, notorious, continuous adverse and unequivocal possession of the land in controversy, under color of title in himself and those under whom he claims, for twenty-one years before the action was brought.

2. Title out of the State by offering a grant to a stranger, without connecting himself with it, and the proof of open, notorious, continuous adverse possession, under color of title in himself and those under whom he claims, for seven years before the action was brought.

3. As against the State, possession under known and visible boundaries for thirty years, or as against individuals for twenty years before the action was brought.

These methods are not exclusive. Colorable title to land may be utilized to establish title against the State. The choice of method, or methods, lies exclusively within the party's control, subject only to the facts.

In *State v. Brooks, supra,* the defendants chose, at the first trial, to establish their purported title on the basis of adverse possession and failed. *State v. Brooks,* 275 N.C. 175, 166 S.E.2d 70 (1969). Upon retrial, defendants then chose to establish their title by connecting themselves to a grant from the State in controversy, and they again failed. In that case, there was *not* uncontroverted evidence of a grant of the lands in controversy from the State as Appellants would have this Court believe. Rather, our Supreme Court *assumed* for the purposes of decision that the land was a part of a prior grant, but in considering the evidence produced by defendants at trial—under the theory of title chosen by defendants—found defendants' title fatally defective due to absence of two necessary links in their chain. *State v. Brooks,* 279 N.C. 45, 57, 181 S.E.2d 553 (1971).

Likewise, in *Taylor v. Johnston, supra,* your Appellant J.T. TAYLOR, JR., by his own choosing, attempted to establish his title solely by connecting himself with a grant from the State. He was partially successful. He was able to show valid title to a one-fifth undivided interest. He failed to show valid title to the major portion because of a crucial break in his chain. His own case stands as positive proof of ability to successfully overcome the presumption in our statute.

Appellants provide this Court with a hypothetical fact situation (J.S., pp 14-15), in which they contend the statute would unreasonably and unconstitutionally deprive a private party of title without due process of law. In their hypothetical, party B *would* have ample opportunity to prove his title under the methods set forth in *Mobley, supra,* by proving record title in A and his title derived from adverse possession against A. This Court does not entertain questions of constitutionality under hypotheticals:

> Federal courts are courts of limited jurisdiction. They have the authority to adjudicate specific

> controversies between adverse litigants over which and over whom they have jurisdiction. In the exercise of that authority, they have a duty to decide constitutional questions when necessary to dispose of the litigation before them. But they have an equally strong duty to avoid constitutional issues that need not be resolved in order to determine the rights of the parties to the case under consideration.

Ulster County Court v. Allen, 442 U.S. 140, 154, 99 S.Ct. 2213, 60 L.Ed. 2d 777 (1979).

Appellants assert that other states do not apply a similar presumption and no undesirable results ensue. This begs the question. No state decision cited involved a presumptive statute. Each case cited is clearly not in point despite general statements in headnotes.

Robertson v. State Highway Commission, 148 Mont. 275, 420 P.2d 21 (1966) did not even involve land titles; it was an action to enforce a condemnation judgment.

Short Beach Cottage Owners Improvement Association v. Town of Stratford, 154 Conn. 194, 224 A.2d 532 (1966) did not even involve a sovereign state; it involved a town whose title derived from a sovereign state.

Trustees of Schools of Township No. 8 v. Lilly, 373 111. 431, 26 N.E.2d 489 (1940) turned on another evidentiary presumption (lost grant presumed from adverse possession of 78 years) which is not even necessary or required in North Carolina land title law.

State v. Phillips, 305 A.2d 644 (Del. Ch. 1973) *aff'd,* 330 A.2d 136 (Del. 1974) is interesting. It completely supports the rationality of our presumption. When reduced to its holding, it simply says that when a sovereign state establishes its title by the Treaty of Paris in 1783 (an indisputable historic fact) and the private party proves no

title, title is held to be in the sovereign state. Our statute simply recognizes the same indisputable historic fact and obviates the necessity of proving the Treaty of Paris.

Arguments that our statute is unconstitutional as applied center around two principal documents—1975 land grant from the State to David Allison and a purported 1908 trust deed from the State and alleged Allison heirs to a trustee.

With regard to the 1795 Land Grant to David Allison, it is true the State's surveyor testified on cross-examination that the land is located within the boundaries of the grant. However, Appellants offered R. Bryant Wall whose testimony included identification of four of the State's proposed documentary exhibits. He testified that these four deeds established a chain of conveyances of the grant land subsequent to its date, culminating in a deed to the Governor of the State of North Carolina. *State v. Taylor, supra,* at 677.

With regard to the purported 1908 trust deed, the North Carolina Court of Appeals did not fail to recognize this instrument as a muniment of title on the basis of its vague description. Rather, it was shown at trial and determined on appeal to be in operative "to convey title since it lacked evidence of full execution, recordation or delivery" (Id., at 677), elements essential for its validity under unchallenged North Carolina land laws. Appellants apparently proceed upon a premise that they have satisfied one of the methods of proving valid title by connecting themselves by chain of title to a grant from the State. This premise is patently unsound. At no point has anyone put forward any evidence or arguments connecting "Florence E. Phipps" (the purported grantor in their 1967 Phipps-to-English deed) as an heir of the "David Allison" who was the grantee of Land Grant No. 819. Likewise, no one has produced any credible evidence or arguments that the parties named in the

purported 1908 trust deed were connected to the "David Allison" who was the grantee of Land Grant No. 819.

They further complain the presumption places upon them an unduly harsh burden of proof because vague and uncertain descriptions of tracts of land are common in eighteen and nineteenth century deeds and generally do not withstand modern proof requirements. However, they point to no such ancient deed containing a vague description which is relied upon by them as a link in their chain. And, well they should not. One of the fatally defective links in their chain, and in fact the one which contains the type of vague description they complain of, is the 1968 Phipps-to-English deed. The only portion of its description which could possibly pertain to the land in controversy reads as follows:

> And any and all other land and interest in land within Craven County, North Carolina, owned by David Allison at the time of his death. . . .

Our Court of Appeals correctly held such a description too vague and insufficient to convey any land on the basis of established precedent. *Id.*, at 676-677.

Thus, it is readily apparent that the so-called chains of title to both the Taylor Group and Moore contain links so fatally defective that they cannot even be relied upon as *color of title* (*Id.*, at 677), much less to establish a *connected chain of title. Taylor v. Johnston, supra; Mobley v. Griffin, supra.*

Since the State was not required to introduce rebuttal evidence at trial, the 1801 tax deed reconveying the lands in Grant No. 819 to the State was not formally introduced into evidence. However, its existence is a fact proven by Appellant's own uncontroverted testimony. All that would be required for the State to prevail on the merits at a retrial of this case would be the introduction of that deed by the

State. Therefore, what Appellants are, in effect, asking this Court to do is to engage in an academic discussion of contitutional principles of law in a case which will not be affected in any way by the ruling of this Court on the record before the Court.

Consequently, *N.C. Gen. Stat.* §146-79 is not unconstitutional as applied in this case, since consideration of all pertinent evidence shows title to the land in controversy to be validly vested in the State. On the other hand, Appellants have not in any way mounted sufficient credible evidence to establish good and valid title in themselves under any recognized method of establishment of land titles in the State of North Carolina.

CONCLUSION

As shown hereinabove, *N.C. General Stat.* §146-79 is constitutional on its face under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The statute is likewise constitutional as applied in this case. Consequently, this Honorable Court should dismiss this appeal since:

(1) It does not present any substantial federal questions;

(2) The judgment below rests upon an adequate non-federal basis; and

(3) This Court is asked to review based upon hypothetical factual situations not present in the case.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) copies of the foregoing MOTION TO DISMISS APPEAL AND BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL were served upon counsel of record for appellants and upon counsel for each other party separately represented in this appeal by depositing said copies in a United States post office, with the first-class postage prepaid, addressed to such counsel as follows:

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This the 9th day of February, 1984.

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